

SERVED: July 28, 1993

NTSB Order No. EA-3940

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 9th day of July, 1993

_____)	
JOSEPH M. DEL BALZO,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-11268
v.)	
)	
JACK W. KASPER,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

Both the Administrator and the respondent have appealed from the oral initial decision of Administrative Law Judge Jerrell R. Davis, rendered at the conclusion of an evidentiary hearing on March 12, 1991.¹ The law judge affirmed an order of the Administrator charging respondent with violations of sections 45.23(a) and 91.31(c) of the Federal Aviation Regulations ("FAR,"

¹An excerpt from the hearing transcript containing the initial decision is attached.

14 C.F.R. Parts 45 and 91).² For reasons discussed herein, we affirm the decision of the law judge.

The facts are simple and not in dispute. Essentially, respondent admits that he acted as pilot-in-command of an aircraft for Santiam Air, Inc. on January 15 and 30, 1989. The aircraft he operated had recently been rebuilt and consisted of the engine from aircraft N234K and the frame from aircraft N668DH.³ By letter dated January 10, 1989, respondent had requested approval from the FAA to change the registration number on the aircraft to N234K.⁴ During a ramp inspection conducted on February 23, 1989, an FAA inspector discovered both registrations and a copy of respondent's request in the aircraft. The registration number N234K was displayed on the outside of the aircraft.

²§ 45.23 Display of marks; general.

"(a) Each operator of an aircraft shall display on that aircraft marks consisting of the Roman capital letter "N" (denoting United States registration) followed by the registration number of the aircraft. Each suffix letter used in the marks displayed must also be a Roman capital letter."

§ 91.31 Civil aircraft flight manual, marking, and placard requirements.

* * *

(c) No person may operate a U.S. registered civil aircraft unless that aircraft is identified in accordance with Part 45."

³N234K was damaged beyond repair in an accident several months earlier, after which Santiam Air purchased N668DH with the intent of combining parts of the two aircraft to form one intact aircraft. Both aircraft were registered to Santiam Air, Inc.

⁴Evidence submitted at the hearing revealed that the FAA ultimately granted approval for the registration change on March 16, 1989.

The law judge perceived the main issue in this case as one of sanction and we agree. After entertaining all the evidence and arguments, he reduced the suspension period from 90 to 15 days. The Administrator argues in his appeal that, since no direct precedent was available, the law judge should have deferred to the sanction submitted by the Administrator. Respondent, in turn, maintains that he should receive no sanction because his actions did not compromise air safety.

The Administrator argues that a 90-day suspension is in accordance with FAA policy and that the facts and circumstances support a 90-day suspension. He asserts that, although no direct precedent is available, in a similar situation the sanction guidelines recommend a suspension of 30 to 90 days for "operating an aircraft with an invalid airworthiness certificate and improper registration." Administrator's appeal brief at 11. Respondent admittedly was charged with operating an aircraft that did not have the proper registration marking displayed on the exterior of the aircraft, not with intentionally defying the registration requirements of the FARs.

FAA counsel also contends that a 90-day suspension is necessary, given respondent's admission that he knew FAA authorization was needed in order to swap the registration numbers. We fail to see, however, why this declaration justifies such a severe sanction. Respondent made a good faith effort to notify the FAA of the registration switch and testified that he believed the paperwork would be approved as a matter of routine

which, in fact, it was. Respondent's actions appeared to be neither an attempt to conceal the origin of the aircraft, nor an effort to deceive the inspector. Both aircraft were registered to the same owner and it was obvious from the information in the aircraft, i.e., the registrations for the aircraft and a copy of respondent's written request to the FAA, what had occurred. As the Administrator aptly recognizes, the primary purpose of requiring the correct registration number to be displayed on the aircraft is the accurate identification of the aircraft's owner.

We are satisfied that there were clear and compelling reasons to reduce the sanction. Administrator v. Muzquiz, 2 NTSB 1474 (1975).

It must be emphasized, however, that although the FAA ultimately granted approval for the registration swap, this does not excuse respondent's operation of the aircraft without the requisite authorization. We are unwilling to espouse respondent's argument that, because his actions did not compromise air safety, he should receive no suspension. While it is true that the violations with which he was cited are not grave, they are significant enough to warrant sanction. The Board has upheld suspensions for violations that could be considered technical and sees no reason to deviate from that practice in the instant case.⁵

⁵See Administrator v. McGhee, NTSB Order No. EA-3580 at 6, n. 6 (1992), where the respondent argued that his operation of an aircraft with an out-of-date certificate resulted in a mere technical violation because, when he realized that the aircraft was not registered, he submitted the required paperwork

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The Administrator's appeal is denied;
3. The initial decision is affirmed; and
4. The 15-day suspension of respondent's airman certificate shall begin 30 days after service of this order.⁶

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

(..continued)
immediately. We found that his action did not excuse the violation, as he was responsible for making sure that his aircraft was in compliance with the applicable FARs.

⁶For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to FAR § 61.19(f).